PRIVY COUNCIL REPORTS

Howe Yoon Chong v Chief Assessor & Anor

PRIVY COUNCIL (ON APPEAL FROM SINGAPORE) — PRIVY COUNCIL APPEAL NO 39 OF 1988
LORD KEITH OF KINKEL, LORD TEMPLEMAN, LORD GRIFFITHS, LORD ACKNER AND LORD LOWRY
6 FEBRUARY 1990

Revenue Law — Property tax — Valuation of property — Method of arriving at rate per sq ft of property — Increase in 'reduced' area — Validity of valuation list — Property Tax Act 1961, ss 2, 4(2), 8, 9, 10, 18(1) & (7)

Constitutional Law — Equality before the law — Intentional and arbitrary discrimination — Whether valuation of property discriminatory and unconstitutional — Constitution of the Republic of Singapore, art 12(1)

This appeal concerns the valuation for property tax purposes of the appellant's dwelling house in Binjai Park for the year 1976. The house was built in 1966 and in 1970, following a general revaluation of properties in Binjai Park, the annual value was increased to $8,400. In 1975, the appellant carried out extensive alterations and additions to the house, which resulted in the 'reduced' floor area being increased. The alterations were reported to the Chief Assessor who, by notice dated 30 November 1976, increased the annual value to $28,000. He arrived at this figure by reference to current rentals passing for comparable houses in Binjai Park, and considered a rate of $6.37 per sq ft a fair and reasonable rate for the appellant's house. The appellant appealed to the Valuation Review Board which dismissed his appeal. Subsequent appeals to the High Court and Court of Appeal centred on the issue that although there was a very substantial increase in the general level of rental values in Singapore between 1970 and 1976, the valuations of owner-occupied houses in Binjai Park which did not undergo any structural alterations during that period remained the same throughout. Thus, the increased valuation placed upon the appellant's house for 1976 resulted in the rate per sq ft being very much higher than the equivalent rate in that year for those unaltered houses. The appellant argued that this contravenes art 12(1) of the Constitution. He argued that the same rate per sq ft brought out by dividing the 1970 annual value by the 1970 floor area should have been applied to the floor area of the house, as increased by the additions and alterations. The appellant further argued that the anomalies in the valuation list arose as a result of a deliberate policy towards the application of the relevant provisions of the Property Tax Act 1961 and that this amounted to intentional and arbitrary discrimination.

Held, dismissing the appeal:

(1) A general revaluation of properties in Singapore was done in 1970 and 1979. Between those years, where a property was affected by certain of the changes of circumstances mentioned in s 18(7) of the Property Tax Act 1961, that property was revalued on the basis of current rentals, but properties which were not so affected remained in the valuation list at the annual values shown in the list for the previous year. This was because it was physically impossible for the Chief Assessor to prepare a new valuation list every year, so as authorized by s 10, he adopted the previous year's list with particular alterations and amendments.

(2) The Chief Assessor's practice had the effect that properties affected by any of the changes of circumstances were valued at a higher level, in terms of rates per sq ft of floor area, than those comparable properties which had not been so affected.

(3) This situation did not amount to a contravention of art 12(1) of the Constitution. Absolute equality in the field of valuation for property tax purposes is not attainable. Inequalities which result from the application of a reasonable administrative policy do not amount to deliberate and arbitrary discrimination. It would be impracticable for the Chief Assessor to make up a new valuation list every year incorporating up-to-date values for all properties, or to amend all values by reference to increased rentals of similar properties. The most that he could do was to carry out at regular intervals a general valuation.

(4) The Property Tax Act 1961, by its general scheme and specific provisions, aimed at practical equality of valuations on an up-to-date basis. The extent to which this can be achieved, in an inflationary environment, depended on the extent of the resources available to the Chief Assessor.

(5) The extent of which some values fell behind others depended on the progress the Chief Assessor was able to make in keeping the valuation list up-to-date, the level of inflation, and the passage of time. It was these circumstances and not any 'intentional violation of the essential principle of practical uniformity' which led to disparities. The extent of these disparities at a particular time is not in itself capable of evidencing an infringement of art 12(1), nor is the absence of some legislative position which, by requiring an artificially low level of valuation for properties affected by a change of circumstances, would have prevented them from emerging.

Cases referred to

1 *Sunday Lake Iron Co* v *Township of Wakefield* (1918) 247 US 350 (refd)
2 *Sioux City Bridge Co* v *Dakota County* (1922) 260 US 441 (refd)
3 *Howe Yoon Chong* v *Chief Assessor* [1981] 1 MLJ 51 (folld)
4 *Hamilton* v *Adkins* (1948) 35 SR 2d Series 183 (folld)

Legislation referred to

Constitution of the Republic of Singapore art 12(1)
Property Tax Act 1961 ss 2, 4(2), 8, 9, 10, 18(1), (7)

David Widdicombe QC (*Pathma Selvadurai* with him) for the appellants.

George Newman QC (*Lucy Hang Chi (Mrs)* and *Michael Lazarus* with him) for the respondents.

Cur Adv Vult

Lord Keith of Kinkel (delivering the judgment of court): This appeal is concerned with the valuation for property tax purposes of the appellant's dwelling house at 9 Binjai Park, Singapore, for the year 1976. The house was built in 1966, and was then ascribed an annual value of $2,400. In 1970, following a general revaluation of properties in Binjai Park, the annual value was increased to $8,400. In 1975, the appellant carried out extensive alterations and additions to the house, which resulted in the 'reduced' floor area being increased from 2,340 sq ft to 4,526 sq ft. A 'reduced' area is ascertained by discounting space occu-

pied by passages and bathrooms and the like. The alterations were reported to the Chief Assessor who, by notice dated 30 November 1976, increased the annual value to $28,000. He arrived at this figure by reference to current rentals passing for comparable houses in Binjai Park, which brought out rates of between $6.83 and $10.63 per sq ft of 'reduced' area. He considered a rate of $6.37 per sq ft, in the light of these comparisons, to be a fair and reasonable rate for the appellant's house, and this, when applied to the 'reduced' floor area of 4,526 sq ft, brought out his figure of $28,000.

The appellant appealed to the Valuation Review Board which, on 15 September 1980, dismissed his appeal. Various matters were canvassed in the course of the appeal but only one issue has been persisted with in subsequent proceedings. That issue arises out of the circumstance that, although there was a very substantial increase in the general level of rental values in Singapore between 1970 and 1976, the valuations of owner-occupied houses in Binjai Park which did not undergo any structural alterations during that period remained the same throughout. Thus the increased valuation placed upon the appellant's house for 1976 resulted in the rate per square foot of 'reduced' floor area for that house being very much higher than the equivalent rate in that year for those unaltered houses. It was contended for the appellant that this situation contravened art 12(1) of the Constitution of Singapore, which provides:

> All persons are equal before the law and entitled to the equal protection of the law.

In order to avoid any such contravention, so it was argued, there should be applied to the floor area of the house, as increased by the alterations and additions, the same rate per sq ft as was brought out by dividing the 1970 annual value by the 1970 floor area. That rate was $3.59, which brought out a valuation for 1976 of $16,240.

The appellant appealed to the High Court, where Lai Kew Chai J accepted his argument and by judgment dated 24 October 1984, allowed the appeal and reduced the annual value of 9 Binjai Park for the year 1976 to $16,240. [See [1985] 1 MLJ 182.]

However, on appeal by the Chief Assessor the Court of Appeal (Wee Chong Jin CJ, Sinnathuray and Thean JJ) set aside the judgement of Lai Kew Chai J and restored the order of the Valuation Review Board. [See [1988] 1 MLJ 139.] The appellant now appeals to this Board.

At the material time, property tax in Singapore was regulated by the Property Tax Act 1961, as amended in 1973. That Act, with its amendments, has been repealed and re-enacted as the Property Tax Act 1985. The references which their Lordships shall make are to the sections in the former Act, which bear different numbers to those in the Act of 1985.

By s 9 of the Act of 1961, the Chief Assessor is required to cause to be prepared a list, to be known as the Valuation List, of all houses, buildings, land and tenements, containing certain information about each property, including its description and the annual value ascribed to it. Under s 4(2), the Chief Assessor is responsible for the assessment of the annual values of properties for purposes of the Act. Section 8 fixes the property tax as a percentage of annual value. 'Annual value' is defined in s 2 as being, so far as houses are concerned:

> ... the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes.

The definition is subject to certain provisos, two of which are in these terms:

> (b) in assessing the annual value of any property, the 'annual value' of such property shall, at the option of the Chief Assessor, be deemed to be the annual value as hereinbefore defined or the sum which is equivalent to the annual interest at five per cent —
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> (i) on the estimated value of such property, including buildings, if any, thereon; or
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> (ii) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon;
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> (c) in estimating the annual value of any house, building, land or tenement, the 'annual value' of such house, building, land or tenement shall, at the option of the Chief Assessor, mean the annual equivalent of the gross rent at which the same is let or licensed to the occupier or occupiers, as the case may be, and in arriving at such annual equivalent the Chief Assessor may also give consideration to any capital or periodical sums or any other consideration whatsoever, if any, which, it appears to the Chief Assessor, may have also been paid;

Other provisions of the Act material for present purposes are these:

> 10 It shall be in the discretion of the Chief Assessor either to cause to be prepared a new Valuation List every year or to adopt the Valuation List then in force, with such alterations and amendments as may have been made from time to time in accordance with the provisions of this Act.
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> 18 (1) Where it appears that any Valuation List is or has become inaccurate in any material particular, the Chief Assessor may, on the application of any person interested, or otherwise, and in the matter hereinafter provided, amend the Valuation List accordingly.
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> ...
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> (7) For the purposes of this section, the Valuation List shall be deemed to be inaccurate in a material particular where
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> (a) the Chief Assessor is of the opinion that the annual value of a property included in the Valuation List does not correctly represent the annual values evidenced by —
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> (i) the rental obtained from a tenant in respect of a property previously occupied by the owner;

(ii) the increased or decreased rental obtained in respect of the letting out of that or similar property; or

(iii) the consideration paid or value passing on the sale or transfer directly or indirectly of any estate or interest in that or similar property, including the sale or transfer of seventy-five per cent or more of the issued ordinary shares of a land-owning company, whether or not the Chief Assessor exercises the option given in paragraph (b) of the proviso to the definition of 'annual value' in section 2;

(b) the Chief Assessor is of the opinion that the rental, if any, obtained from the tenant is lower than the gross amount at which the property could reasonably be expected to be let from year to year;

(c) any new building is erected or any building is rebuilt, enlarged, altered, improved or demolished;

...

From the evidence led for the Chief Assessor before the Valuation Review Board, it appeared that there was a general revaluation of all the properties in Singapore in 1970. In each subsequent year up to 1979, when there was another general revaluation, the practice was that where a property was affected by certain of the changes of circumstances mentioned in s 18(7) then that property was revalued on the basis of current rentals, but properties which were not so affected remained in the valuation list at the annual values shown in the list for the previous year. The Chief Assessor considered it physically impossible to prepare a new Valuation List each year, involving revaluation of all properties, so as authorized by s 10 he adopted the previous year's list with the particular alterations and amendments.

The changes of circumstances which led to alterations in value were where a property previously owner-occupied had been let out, where the rental of a tenanted property had been increased, and where a new building had been enlarged, altered or improved. Alterations in value in these circumstances were authorized by paras (a) (i) and (ii) and (c) of s 18(7).

In a situation of rising property values, such as prevailed in Singapore between 1970 and 1976, the Chief Assessor's practice had the effect that properties affected by any of these changes of circumstances came to be valued at a higher level, in terms of rates per sq ft of floor area, than those comparable properties which had not been so affected. A disparity similarly arose between properties affected by a change of circumstances earlier in the period and those affected later.

The question is whether this state of affairs amounted to a contravention of art 12(1) of the Constitution. Their Lordships were referred to a number of cases in the property tax field in the United States of America, in relation to the equal protection of the law clause in the Fourteenth Amendment to the Constitution of that country. In *Sunday Lake Iron Co* v *Township of Wakefield*[1] the Supreme Court made the following statement of principle at p 352:

> The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond* v *Chicago Union Traction Co* 207 US 20, 35, 37. It is also clear that mere errors of judgment by officials will not support a claim of discrimination. There must be something more - something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party.

That statement was reaffirmed by the Supreme Court in *Sioux City Bridge Co* v *Dakota County*.[2] The effect of the decisions is that in an appropriate case the owner of a property valued higher than comparable properties may be entitled to have its value reduced to the level of the latter properties, even though that would be substantially less than its true value assessed in accordance with the relevant statute.

A number of the American cases were cited to this Board in *Howe Yoon Chong* v *Chief Assessor*,[3] an appeal by the present appellant in relation to a different property. The evidence about the state of the valuation list was broadly similar, though not so detailed, to that in the present case. It was contended for the appellant that the list was so defective, by reason of omissions and many properties being entered at grossly inadequate values, as to be invalid. It was also contended that entering the appellant's property in the list at its up-to-date value, when the values entered for many other properties were too low, violated art 12(1) (then art 8(1)). Both contentions were rejected. Lord Fraser of Tullybelton, delivering the judgment of the Board, said at p 53:

> The Constitution, being the supreme law of Singapore, will of course prevail over any law or any administrative practice inconsistent with it. Their Lordships do not in any way underrate the fundamental importance of the Constitution or of art 8 in particular. Indeed, the importance of the equal protection clause is emphasized if, as Rajah J said, it is not possible under the Property Tax Act for an owner of property to complain that the property of another owner is entered on the list at an under-valuation. That seems to be the accepted view in Singapore and their Lordships will assume that it is correct, although the opposite view might be maintainable in light of the provision in s 12(1) for objections by any owner aggrieved by the inclusion of 'any property' or by the annual value ascribed thereto or by 'any omission' from the list. But a breach of the equal protection clause could not be established by proving the existence of inequalities due to inadvertence or inefficiency unless they were on a very substantial scale. Several authoritative decisions on the equal protection provision of the Fourteenth Amendment to the American

Constitution were brought to the attention of their Lordships. Some caution is required in applying these authorities to the Constitution of Singapore but their Lordships see no reason to doubt that 'intentional systematic under-valuation', such as was envisaged by the Supreme Court in *Sioux City Bridge Co* v *Dakota County* (1922) 260 US 441, would be a breach of art 8 of the Singapore Constitution. No case of that sort was made in this appeal. Something less might perhaps suffice, but their Lordships are of opinion that, where the defects are the result of inadvertence or inefficiency, such as is alleged in this case, the test of unconstitutionality would not be substantially different from the test of validity of the list. In the present case defects on the necessary scale have not been proved to exist.

Counsel for the appellant argued that in the present case the anomalies in the valuation list did not arise through inadvertence or inefficiency, but as a result of a deliberate policy towards the application of the relevant provisions of the Act of 1961, and that this amounted to 'intentional and arbitrary discrimination' within the meaning of the American authorities. It was maintained that in order to preclude such a state of affairs and secure conformity with art 12(1), there should be read into the Act a provision similar to the 'tone of the list' requirement in s 20 of the English General Rate Act 1967.

In their Lordships' opinion it is clear that, as the American authorities recognize, absolute equality in the field of valuation for property tax purposes is not attainable. Inequalities which result from the application of a reasonable administrative policy do not amount to deliberate and arbitrary discrimination. Thus in *Hamilton* v *Adkins*[4] a system whereby a county was divided into four districts, one of which was revalued in each of four successive years, was held by the Supreme Court of Alabama not to infringe the equal protection clause of the Fourteenth Amendment. In Singapore the Chief Assessor, in the exercise of his discretion under s 10 of the Act of 1961, might choose to make up a new valuation list each year incorporating up-to-date values for all properties. That would be impracticable. He could achieve the same result by operating the last part of (a)(ii) of s 18(7), by in each year amending all values by reference to increased rentals obtained for similar properties. That would be equally impracticable. The most that the Chief Assessor can do as regards carrying out a general valuation is to do so at such intervals as the resources available to him permit. It is not maintained that he could or should have done so at shorter intervals than actually occurred, in particular that he should have done so in or before 1976. In the meantime he revalued in each year properties which had undergone a specific change of circumstances, and did so on the basis of current rentals, as the Act required. It is to be observed that according to the evidence, some 60% of the properties in the Binjai Park area had been revalued on this ground between 1970 and 1976. The primary cause of the disparities of valuation which have emerged is inflation.

The Act of 1961, by its general scheme and its specific provisions, aimed at practical equality of valuations on an up-to-date basis. The extent to which practical equality was capable of being achieved, in an inflationary environment, depended on the extent of the resources available to the Chief Assessor. Some values were bound to fall behind others. The extent to which this happened depended on the progress the Chief Assessor was able to make in keeping the valuation list up-to-date, the level of inflation, and the passage of time. It was these circumstances and not any 'intentional violation of the essential principle of practical uniformity' which led to disparities. The extent of these disparities at a particular time is not in itself capable of evidencing an infringement of art 12(1), nor is the absence of some legislative provision which, by requiring an artificially low level of valuation for properties which had undergone a change of circumstances, would have prevented them from emerging. In the whole circumstances their Lordships can find nothing in the general scheme of the Property Tax Act 1961, or in the measures adopted by the Chief Assessor in administering its provisions, which can properly be held to amount to deliberate and arbitrary discrimination such as to infringe art 12(1) of the Constitution.

Their Lordships, accordingly, dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Clifford Chance; Jaques & Lewis.*

Reported by *Zarinah Marican*